

APPEAL NO. 020914
FILED JUNE 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 8, 2002. There were issues reported concerning two compensable injuries; essentially, the respondent (claimant) had an earlier _____, back injury (the 1995 injury) when the employer was insured by the appellant (carrier 1). However, he had a fall at work on _____ (the 2001 injury), when the employer had changed coverage to the respondent (carrier 2).

The hearing officer determined that the claimant had never entirely recovered from the effects of his 1995 injury, but that he sustained a second compensable injury on _____, and had disability therefrom. The hearing officer found that the effects of the 2001 injury resolved as of June 10, 2001, but that the residual symptoms still encountered by the claimant resulted from his 1995 injury. The hearing officer ordered medical benefits to be paid in accordance with this decision.

However, the carrier responsible for the 1995 injury (carrier 1) has appealed, asserting confusion as to liability for medical bills for the ongoing care of the claimant's back condition. Carrier 1 argues that carrier 2 waived any right to assert a "producing cause" issue and that because of this, and no finding that the 2001 injury was not the producing cause of back problems, confusion was created as to the responsibility for "ongoing" medical care. Carrier 2 counters that any issue of "producing cause" by the 2001 injury to the current medical conditions was subsumed in the overall issue of whether such injury occurred, and that there has been no waiver. Carrier 2 states that the decision of the hearing officer is supported by the record. There has been no appeal of the hearing officer's finding that the 2001 injury resolved on June 10, 2001.

DECISION

We affirm the hearing officer's decision.

The claimant's 1995 injury from a lifting incident involved a herniated lumbar disc for which he has preferred not to have surgery, although recommended. On _____, he slipped and fell. His initial injury was a contusion, but he had increasing pain thereafter. MRIs performed after both injuries are essentially similar with respect to bulges or herniations. While the required medical examination doctor opined that there was no new injury from the 2001 fall, there was undoubtedly an incident after which there was a contusion and increasing pain. The treating doctor for both injuries characterized the second injury as strain and bruises from which the claimant recovered on June 10. The hearing officer evidently concluded from this that there was an injury although limited in duration, but that the dominant problem remained the effects of the 1995 injury. This is supported by the record.

We would note that the Medical Review Division of the Texas Workers' Compensation Commission has the primary responsibility to determine whether a given health care service constitutes reasonable and necessary medical care to treat the effects of an injury. However, we cannot agree that "ambiguity" was created by the hearing officer's decision. If anything, ambiguity about treatment for the claimant's "current" back problems was resolved. The hearing officer has found that the effects of the 2001 injury were resolved by June 10, 2001. He further found that the claimant continued to suffer the effects of his 1995 injury after that date. Certainly, this combination of findings serves as an implied finding that the 2001 injury ceased to be a "producing cause" of the claimant's medical condition and problems after June 10, 2001. Although carrier 1 contends that such a clear decision does not bind the parties to pay medical benefits, we disagree. Carrier 1's assertion of ambiguity appears to be a variation of its basic position that the 2001 injury obviated its responsibility for medical care thereafter. Our reading of the decision indicates that carrier 2 had primary responsibility for health care during the six-month period in 2001 that the 2001 injury caused a loss of work and pain. Carrier 1 has responsibility for health care thereafter.

In considering all the evidence in the record, we cannot agree that the findings of the hearing officer are so against the great weight and preponderance of the evidence as to be manifestly wrong and unjust. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We therefore affirm the decision and order.

The true corporate name of carrier 1 is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750
AUSTIN, TEXAS 78701.**

The true corporate name of carrier 2 is **AMERICAN MOTORISTS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750
AUSTIN, TEXAS 78701.**

Susan M. Kelley
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

CONCUR IN THE RESULT:

Gary L. Kilgore
Appeals Judge